

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 17, 2008

**STATE OF TENNESSEE v. BILLY STAGGS<sup>1</sup>**

**Appeal from the Circuit Court for Wayne County  
No. 14,159 Stella Hargrove, Judge**

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**No. M2007-01726-CCA-R3-CD - Filed October 14, 2008**

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The defendant, Billy Staggs, appeals from the Wayne County Circuit Court's judgments sentencing him to serve his effective ten-year sentence on his guilty pleaded convictions of two counts of the sale of .5 grams or more of methamphetamine and one count of the sale of marijuana in confinement. The record supports the trial court's determination of the manner of service of the defendant's sentences, and we affirm the judgments.

**Tenn. R. App. P. 3; Judgments of the Circuit Court Affirmed**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. McLIN, JJ., joined.

M. Wallace Coleman, Jr., Lawrenceburg, Tennessee, for the appellant, Billy Staggs.

Robert E. Cooper, Jr., Attorney General and Reporter; Matthew Bryant Haskell, Assistant Attorney General; T. Michel Bottoms, District Attorney General; and Douglas Dicus, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The defendant was indicted on three felony offenses of selling controlled substances, *see* T.C.A. § 39-17-417 (2006), in October 2006, and he later submitted open guilty pleas to all the charges.

The trial court conducted a sentencing hearing on June 28, 2007, in which it heard the presentence investigation officer testify that the defendant had been convicted previously in

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<sup>1</sup> Although the defendant, in his brief, presents his name as "William Billy Staggs," the indictments simply list the name as "Billy Staggs." As is the practice of this court, we utilize the defendant's name as it appears in the indictment.

California of possession of a controlled substance and in Tennessee of “obstruction,”<sup>2</sup> possession of a Schedule II controlled substance, and possession of a dangerous weapon with intent to go armed. The California drug possession conviction was the single felony among the defendant’s prior convictions. The officer testified that the sentences for each of the prior convictions had been suspended except for 20 days’ incarceration on the three-year sentence on the California drug charge. She further testified that the defendant admitted using “crystal methamphetamine” and regularly using marijuana. He admitted using marijuana as recently as two weeks prior to his interview with the officer. The officer testified that she believed that the Wayne County General Sessions Court had previously revoked the defendant’s probation.

The officer testified that the defendant had been employed for “several years” doing backhoe work for his mother’s logging company. She testified that the defendant had a minor son.

A Wayne County deputy sheriff testified that the defendant’s convictions emanated from an October 2006 undercover drug-buying operation. He testified that the manufacturing and trafficking in methamphetamine in Wayne County was “a very, very bad problem” and that methamphetamine was “the illegal drug of choice [and t]he most addictive drug in Wayne County.” He opined that, for a short period of time, law enforcement efforts curbed the incidence of methamphetamine offenses after a major dealer was apprehended but that “[s]omeone else has picked up and kept going with it.” He also opined that the use and sale of methamphetamine was “[p]robably the biggest cause of other crimes,” resulting in increases in thefts and burglaries. He testified that the Wayne County populace is “definitely aware” of the drug problem “because they see the other crimes that are directly related with the methamphetamine problem.”

The Wayne County chief deputy sheriff testified that Wayne County had experienced a “big increase” in the use and sale of methamphetamine. He agreed that the use and sale of methamphetamine had resulted in increased thefts and burglaries because the methamphetamine users “are not working [be]cause they’re not able to work when they get on it, and the only way they can buy it is if they steal and trade what they steal for it.” He added, “We’ve seen a lot of that.” He testified that the public was aware of the drug problem and that arrests and prosecutions for methamphetamine use and sale are highly publicized in the community.

The 39-year-old defendant testified that he had continued to reside with his ex-wife although she was incarcerated on two vehicular homicide convictions at the time of his sentencing. The defendant testified that he had a 19-year-old daughter and a 15-year-old son. The son resided with the defendant. He testified that he and his mother operated a backhoe business and that he worked “pretty much ever[y] day.” He admitted that his probation on a misdemeanor conviction in Tennessee had once been revoked, resulting in his serving ten days in jail. He testified that in the past seven years he had only used methamphetamine four or five times a year. He admitted that he

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<sup>2</sup>The presentence report exhibited to the sentencing hearing shows that the “obstruction” conviction was originally charged as theft and was committed in August 2003. Apparently, this conviction is referenced elsewhere in the record as “theft.”

sold methamphetamine to the undercover officer twice and that he received \$500 for each sale. He testified, "My wife was needing a lawyer and my father just passed away and my mother was having some financial difficulty and I was trying to help her." He testified that he was approximately \$70,000 in debt. He testified that he had been on bond and had met all of his court dates. He testified that he would be able to meet the terms of probation, including the payment of fines and costs, and that he would be willing to undergo drug treatment and community service.

On cross-examination, the defendant admitted that the drug for which he was convicted of possession in California was methamphetamine. He testified that that conviction resulted from his association with a friend who possessed the drug and that he "didn't realize [the friend] had done it." He admitted that he had been convicted in Tennessee of "theft" in 2003 and of possession of a dangerous weapon in December 1998, receiving probation for this latter offense. He further admitted that he was charged with possession of drugs in January 1999.

The defendant's mother testified that she and her son had engaged in logging and saw milling since 1970 but had recently done only backhoe work. She testified that the defendant worked regularly operating the backhoe. She testified that she was "never . . . able to detect" the defendant's drug use and that, had it been otherwise, she would not have allowed him to use the heavy equipment. She agreed that she would assist the defendant in complying with all terms of probation. She opined that the defendant ran a good household. She testified that the defendant's son was home-schooled and was "a special needs child" who had seizures and a speech impediment and was slightly autistic.

Following the testimony and arguments of counsel, the trial court reviewed the principles of sentencing that applied to the defendant, who was a Range I offender convicted of two Class B felonies and one Class E felony. The court found that, based upon the defendant's four prior convictions, one of which was a felony conviction of possession of methamphetamine, and his long history of drug use, he had a previous history of criminal convictions or behavior in addition to that necessary to establish his sentencing range.

The court further determined that the defendant had a previous history of unwillingness to comply with conditions of sentences involving release into the community. The court found that the defendant was on probation when he re-offended in January 1999 and was on probation in California when he committed theft in Tennessee in 2003. The court further found that the defendant "had been given the privilege of probation on four occasions, and . . . has abused that privilege." Additionally, based upon the officers' testimony, the court found that the State had established a need for deterrence of the use and sale of methamphetamine in Wayne County.

The court sentenced the defendant to ten years on the methamphetamine charges and two years on the marijuana charge, and it imposed the sentences to run concurrently. The court ordered the effective ten-year sentence to be served in the Department of Correction.

On appeal, the defendant claims that the trial court erred in denying a sentencing alternative to incarceration. We disagree.

In the present case, we review the trial court's determination of the manner of service of the defendant's sentences de novo with a presumption that the determination is correct. T.C.A. § 40-35-401(d) (2006); *see State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). As the recipient of Class B felony convictions, the defendant is not considered a favorable candidate for alternative sentencing. T.C.A. § 40-35-102(6). As the recipient of sentences of ten years or less, however, he is at least eligible for probation. *See id.* § 40-35-303(a). The defendant bore the burden of showing that he was entitled to probation or to any other alternative sentence. *See, e.g., State v. Mounger*, 7 S.W.3d 70, 78 (Tenn. Crim. App. 1999) (holding that defendant bears the burden of establishing his "suitability for full probation"); *see also State v. Michael W. Dinkins*, No. E2001-01711-CCA-R3-CD, slip op. at 3 (Tenn. Crim. App., Knoxville, Apr. 26, 2002); *State v. Joshua L. Webster*, No. E1999-02203-CCA-R3-CD, slip op. at 3 (Tenn. Crim. App., Knoxville, Dec. 4, 2000).

To determine the appropriate combination of sentencing alternatives that shall be imposed on the defendant, the court shall consider the following:

- (1) The evidence, if any, received at the trial and the sentencing hearing;
- (2) The presentence report;
- (3) The principles of sentencing and arguments as to sentencing alternatives;
- (4) The nature and characteristics of the criminal conduct involved;
- (5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114;
- (6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; and
- (7) Any statement the defendant wishes to make in the defendant's own behalf about sentencing.

T.C.A. § 40-35-210(b). Additionally, "[t]he potential or lack of potential for the rehabilitation or treatment of the defendant should be considered in determining the sentence alternative." *Id.* § 40-35-103(5).

In the present case, the record reveals solid bases for ordering full confinement. Specifically,

Sentences involving confinement should be based on the following considerations:

- (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
- (B) Confinement is necessary . . . to provide an effective deterrence to others likely to commit similar offenses; or
- (C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant[.]

T.C.A. § 40-35-103(1).

We need not belabor the single issue raised. Each of the factors enumerated in Code section 40-35-103(1) was demonstrated in the record, and the trial court aptly relied upon the facts supporting these factors to order full confinement.

Accordingly, the judgments of the trial court are affirmed.

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JAMES CURWOOD WITT, JR., JUDGE